STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0329

In the Matter of the Welfare of the Child of:
A. M. S. and J. L. B., Parents.

Filed August 30, 2021
Affirmed
Segal, Chief Judge

Wright County District Court
File No. 86-JV-20-2220

Matthew Ralston, Ralston Legal LLC, Golden Valley, Minnesota (for appellant-mother A.M.S.)

Brian A. Lutes, Wright County Attorney, John A. Bowen, Assistant County Attorney, Buffalo, Minnesota (for respondent Wright County Health and Human Services)

Lynda Larson, Becker, Minnesota (guardian ad litem)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the termination of her parental rights, mother argues that (a) the record does not support the district court's determination that the county made reasonable efforts to reunify the family; (b) the district court should have continued the trial to allow mother to participate in person; and (c) the record does not support the district court's determinations that she is a palpably unfit parent, and that she failed to rebut the

presumption of palpable unfitness arising from a prior involuntary termination of her parental rights. We affirm.

FACTS

In October 2019, appellant-mother A.M.S. gave birth to E.V.B. (the child). Two days later, respondent Wright County Health and Human Services (the county) received notice of the child's birth. The county received notice because mother's parental rights to three other children had been involuntarily terminated in 2016. The child was placed on a 72-hour hold, but was returned to mother's custody following the development of a safety plan.

In November 2019, the county filed a petition alleging that the child was a child in need of protection or services (CHIPS). Three days later, the child's father, J.L.B., was arrested for allegedly committing domestic assault against mother. The child was present at the time of the assault. As a result of the assault, a domestic-abuse no-contact order (DANCO) was issued that prevented father from contacting mother.

In December 2019, mother admitted to the CHIPS petition. On January 3, 2020, the child was removed from mother's care and placed in foster care after the county made a request for immediate removal due to concerns about mother's mental health. Following an emergency protective-care hearing, the district court found that the child would be endangered if he were to remain in mother's care and that out-of-home placement was in his best interests. The district court noted that the county had considered reasonable efforts to prevent the child's removal from mother's care, but those efforts "did not adequately

address the safety of the child." The district court transferred custody of the child to the county, and the child has remained in foster care since January 3, 2020.

Mother has a long history of significant mental-health issues, complicated by her apparent inability to remain compliant with treatment. In 2015, mother's three older children were adjudicated CHIPS and placed in out-of-home placement due to concerns regarding mother's mental health and how that impacted her ability to parent. The symptoms of mother's mental illness included episodes of psychosis, paranoid delusions, and bizarre behavior. Her case plan required her to address her mental-health needs, but she failed to do so and her parental rights to her three older children were involuntarily terminated in August 2016.

In April 2016, mother was civilly committed due to mental illness, and her medical providers received authorization for the involuntary administration of neuroleptic medication. She remained in intensive, residential treatment until October 2016. Her mental health again deteriorated after the end of her commitment such that, in January 2018, mother's family brought her to the emergency room based on concerns about her behavior. After being admitted to the hospital, mother continued to exhibit delusional and paranoid behavior, which resulted in the filing of another petition for civil commitment. The district court stayed an order of commitment on the conditions that she reside with her mother, work with an Assertive Community Treatment (ACT)[1] team, and remain medication compliant.

[1] The ACT team advocates for mother and assists her with things such as medication management, general support, and making sure her basic needs are covered. The goal of

After the child was removed from mother's care in January 2020, mother and her case worker developed an out-of-home placement plan that identified the goals that mother must achieve to be reunified with the child. The plan identified five goals for mother: (1) address her mental-health symptoms; (2) remain free and sober from all non-prescribed, mood-altering substances; (3) demonstrate the ability to parent the child and meet his needs in an emotionally healthy and appropriate manner; (4) remain law-abiding, including refraining from contact with father due to the DANCO; and (5) cooperate with the county on services aimed at assisting reunification. The county then arranged for services for mother to assist in meeting these goals, including a parenting-capacity assessment, parenting-skills education, and mental-health programming. Mother failed to progress with the programming, and her mental health deteriorated as time went on.

On May 4, 2020, the county filed a petition to terminate parental rights (TPR) of mother. The petition alleged that mother was palpably unfit to parent and that reasonable efforts had failed to correct the conditions that led to out-of-home placement. Mother denied the petition. Following two continuances, the district court scheduled the TPR trial for January 13, 2021. At a hearing held a couple of months before trial, the district court discussed whether the trial would be held in person or remotely due to the COVID-19 pandemic. The county indicated that it had no objection to holding the trial remotely and, when the district court asked if it was the agreement of the parties that the trial would be held remotely, mother did not object or otherwise disagree. Despite mother's agreement

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the ACT team is to allow mother to remain in the community and avoid the need for another civil commitment or hospitalization.

to a remote trial, mother filed an objection, one week prior to trial, seeking an in-person trial either through a continuance or an exception to the pandemic restrictions on in-person proceedings. The district court denied the motion.

At trial, the county presented testimony from the psychologist who performed the parenting-capacity assessment, the nurse who provided parenting-education classes, and mother's case worker. The psychologist testified that mother "was in almost complete denial" about her mental-health concerns. His report indicates that mother "intentionally ignored, or could not remember" her previous diagnostic and psychological assessments, and that she gave such conflicting information during those assessments that it was "difficult, if not impossible to form a definitive diagnosis." He ultimately opined that the best diagnostic profile he could offer was the information provided in a prior diagnostic assessment, that mother had depressive disorder with psychotic features, bipolar disorder, trauma and stress-related disorder, obsessive-compulsive disorder, and histrionic, narcissistic, and antisocial personality features. At trial, the psychologist testified that, based on his assessment, he did not support reunification.

The nurse and case worker similarly did not support reunification based on mother's lack of progress with her parenting skills and inability or unwillingness to accept and address her mental-health conditions. Both testified that mother was a challenge to work with, did not demonstrate the ability to safely parent the child, and exhibited symptoms of deteriorating mental health during the CHIPS case. Finally, the county presented evidence that, despite the DANCO and provision in her out-of-home placement plan that required mother to abide by the DANCO and have no contact with father, mother had become

pregnant with and given birth to another child with father. Mother, two of her family members, a family friend, and a member of the ACT team testified in support of mother. On February 16, 2021, the district court terminated mother's parental rights. Mother now appeals.

DECISION

On appeal from a district court's decision to terminate parental rights, we review "the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "The child's best interests, however, remain the paramount consideration in every termination case." *Id.* The petitioner must establish by clear and convincing evidence that a statutory ground exists for terminating parental rights. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

Mother argues that the district court abused its discretion by terminating her parental rights for three reasons. First, she argues that the record does not support the district court's determination that the county made reasonable efforts to reunify the family. Second, she

argues that the district court abused its discretion by denying her request for a continuance to postpone the TPR trial until it could be held in person. Finally, she argues that the record does not support the district court's determination that mother is palpably unfit to parent. We address each argument in turn.

I. The county was not required to make reasonable efforts to reunify the family.

Mother first argues that the record does not support the district court's determination that the county made reasonable efforts to reunify the family. We review the district court's determination that the county made reasonable efforts to reunify the family for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-23 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

Generally, after a child has been adjudicated CHIPS and removed from the care of a parent, the county must make reasonable efforts to reunify the family. Minn. Stat. § 260.012(a) (2020). But, under Minn. Stat. § 260.012(a)(2), the county is not required to make reasonable efforts at reunification upon a prima facie showing that "the parental rights of the parent to another child have been terminated involuntarily."

Here, it is undisputed that mother's parental rights to her three older children were involuntarily terminated in 2016. The district court thus correctly concluded that the county was not required to make reasonable efforts toward reunification under Minn. Stat. § 260.012(a)(2) and we therefore reject mother's argument on this issue.[2] *See* Minn. Stat. § 260C.301, subd. 8 (2020).

[2] The district court also found that, while not required, the county had made reasonable efforts at reunification, which included providing mother with parenting-skills classes and

II. The district court did not violate mother's due-process rights by holding the TPR trial remotely.

Mother argues that the district court abused its discretion and violated her due-process rights by denying her request for a continuance and holding the trial remotely. Generally, we review the denial of a continuance for an abuse of discretion. *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 760 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997). But "[w]hether a parent's due-process rights have been violated in a [TPR] proceeding is a question of law, which we review de novo." *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008).

Parents in a TPR proceeding are entitled to the due-process protections of the United States and Minnesota Constitutions. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7; *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981). In assessing the process due in any particular case, the courts must balance "the interests involved in the specific case under consideration." *Id.* Ultimately, the "amount of process due varies with the circumstances of the case," and "both the interests of the parent and the child are considered along with the circumstances of the particular case in an effort to determine which of these interests is to predominate." *Id.* at 825-26.

Mother argues that the district court violated her due-process rights by denying her request to continue the trial until it could take place in person. In *H.G.B.*, the supreme court held that a parent does not necessarily have a constitutional right to attend a TPR

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mental-health programming. Because the county was not required to make reasonable efforts at reunification, we need not review this determination.

proceeding in person. *Id.* In *H.G.B.*, a father was not able to attend or observe the hearing that resulted in the termination of his parental rights because he was incarcerated, but the supreme court concluded that his due-process rights were not violated because he was represented at the hearing by an attorney and was allowed to submit testimony by deposition. *Id.* Here, by contrast, mother was able to observe and participate in the hearing, albeit the hearing for both the county and mother was remote. Thus, any alleged burden on mother's due-process rights in this case would appear to be less than in *H.G.B.*

In addition, the rules of juvenile protection procedure provide that "[b]y agreement of the parties, or in exceptional circumstances upon motion . . . or on the court's own initiative, the court may hold hearings and take testimony by telephone or interactive video." Minn. R. Juv. Prot. P. 11.02. On March 13, 2020, the Governor of Minnesota issued an executive order declaring a peacetime emergency in response to the pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). That peacetime emergency was extended many times, and remained in effect during trial. *See* Emerg. Exec. Order No. 21-04, *Extending the COVID-19 Peacetime Emergency Declared in Executive Order 20-01* (Jan. 13, 2021); *see also Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001 (Nov. 21, 2020). We conclude that the COVID-19 pandemic was an "exceptional circumstance" allowing for a remote trial under Minn. R. Juv. Prot. P. 11.02.

Mother argues, however, that "there exists no compelling state interest in having a trial during a pandemic when an in-person trial is not possible" and that clearing the court's

case docket and adhering to timelines "do not amount to a compelling state interest outweighing constitutional rights." We disagree with mother's narrow characterization of the court's interests. The court's interests, as set out in statute and the rules of juvenile protection procedure, include balancing the rights of the parents with the best interests of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). To that end, "[w]here the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2020).

The supreme court has explained that, "[u]nder our law, children are not to be kept waiting, uncertain who will raise them or where they will grow up." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 135 (Minn. 2014). At the time of the TPR trial, the child had already been in out-of-home placement for over a year. It would plainly be contrary to both the child's best interests and stated aim of providing a "speedy" resolution in juvenile-protection matters to continue the trial indefinitely until the trial could be held in person. Rather, the district court's decision to hold the trial remotely struck an appropriate balance: in accordance with Minn. Stat. § 260C.163, subd. 8 (2020), mother was afforded the opportunity "to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the [TPR trial]," while also serving the child's interest in a definitive resolution to the case and certainty about his permanent home.

Moreover, we note that "prejudice as a result of the alleged violation is an essential component of the due process analysis." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008). Mother argues that "the practical realities of a remote hearing make it more difficult for a parent and her attorney to communicate privately and

continuously throughout the proceedings." She asserts that she and her attorney were "unable to communicate as freely as they would in an in-person trial," but does not cite to any specific instances in which she wished to speak with her attorney and was unable to do so. Her generalized contention that the remote nature of the hearing made communication more difficult is insufficient to establish the existence of prejudice as a result of the alleged due-process violation. On this record, we conclude that the district court did not violate mother's due-process rights by denying her request for a continuance and instead holding the trial remotely.

III. The district court did not err in determining that mother is palpably unfit to parent.

Finally, mother argues that the record does not support the district court's determination that she is palpably unfit to parent. On appeal, we will affirm a district court's decision to terminate parental rights if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the child's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385 (citation omitted).

A district court may terminate a parent's parental rights if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable

> future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). The statute creates a presumption, applicable in this case, that a parent is palpably unfit "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.* The presumption can be rebutted by a showing that would "justify a finding of fact" that mother was not palpably unfit to parent. *R.D.L.*, 853 N.W.2d at 137.

Here, mother claims that she brought forward sufficient evidence to rebut the presumption and that the district court's determination that she was palpably unfit to parent the child is not supported by the record. Mother's argument focuses on the fact that she "had four witnesses testify that she is not the same person that she was years prior," was progressing in her case plan and with programming, and had obtained stable housing for herself and the child. We are not persuaded. Regardless of whether mother made a sufficient showing to rebut the presumption of palpable unfitness, we conclude that the district court's determination of palpable unfitness is supported by substantial evidence in the record, independent of any presumption.

The district court in this case made very thorough findings of fact and fully and carefully analyzed the legal issues. The district court detailed the substantial evidence in the record of mother's mental-health history, which shows that mother suffers from severe and persistent mental illness with periods of hallucinations and, of the greatest significance here, that mother fails to be compliant with treatment. Mother's family members testified that she was a different person when she took her medication, but the record indicates that

mother repeatedly failed to take the medications needed to treat her illness. The district court observed that "remaining medication compliant is one of the most important steps [mother] can take in addressing her mental health" but that mother "did not consistently take the medication she was prescribed, even with daily oversight from the ACT team." At trial, mother admitted that she had stopped taking her medication, stating "[a]s a person, I have the right not to take a medication." Mother also continued to deny or minimize her mental-health issues. Thus, mother displayed a current unwillingness at trial to acknowledge her mental-health needs and remain medication compliant.

With regard to the district court's findings on the issue of mother's parenting ability, all three of the county's witnesses—the psychologist who conducted the parenting-capacity assessment, the nurse who provided the parenting-education classes, and mother's case worker—opposed reunification. Mother's argument that she was able to parent is based on her own testimony, which the district court found not to be credible, and the testimony of a member of mother's ACT team. The district court found the ACT team member to be less credible because her job was to serve as an advocate for mother and that "no adequate foundation existed for [the team member's] opinions" regarding mother's parenting skills.[3]

The district court's findings that mother failed to progress with programming are also amply supported in the record. In support of the findings, the district court pointed to

[3] The district court noted that the ACT team member had only recently been hired into that job and that her prior professional experience was as a speech therapist and weight-loss counselor.

the testimony of the professionals who worked with mother to the effect that mother's participation in the programming was sporadic, "surface-level[,] and often antagonistic."

Finally, with regard to the district court's determination that mother was palpably unfit, the district court noted that mother's case worker, mental-health professionals, and even members of her family and ACT team expressed concern over her deteriorating mental health during the pendency of the case. The district court further noted that mother exhibited signs of her deteriorated mental health at trial, had difficulty following even basic questions, and that her testimony was at times rambling and non-responsive. As one example, the district court noted that in response to a question about whether J.L.B. was also the father of her new baby, mother responded, "Greg Ward is not the father to my kid and what were you saying? Nor is his dad." The county had not mentioned Greg Ward. Mother's case worker explained that it is unknown if Greg Ward is a real person, but that he is "part of [mother's] symptomatology" and that mother brings him up when she is experiencing mental-health symptoms.

On this record, we conclude that the district court's determination that mother was palpably unfit to parent the child is supported by the record. The child was removed from mother's care and placed in foster care due to the significant concerns about the status of mother's mental health. At the time of trial, mother continued to deny or minimize these concerns, remained medication non-compliant, and actively exhibited symptoms of her

mental illness. The record therefore supports at least one statutory basis for termination, and the district court did not abuse its discretion in terminating mother's parental rights.[4]

Affirmed.

[4] The district court also terminated mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2020), after determining that reasonable efforts failed to correct the conditions that led to out-of-home placement. Because the record supports the district court's termination under Minn. Stat. § 260C.301, subd. 1(b)(4), we need not address this determination.